

*****ORIGINAL LETTER DATED 7-23-03*****

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7001 0360 00036677 4086)

REPLY TO: 6WQ-P

Ms. L'Oreal Stepney, Director
Water Quality Division (MC-145)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: TPDES Permit Program Review
FY 2003 Mid-Year Report - **Final**

Dear Ms. Stepney:

In accordance with the Memorandum of Agreement between the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (U.S. EPA), Region 6, representatives of the NPDES Permits and Customer Service Branches conducted a FY2003 Mid-year program review of TCEQ's TPDES permitting program, April 23rd & 24th, 2003. Enclosed is the **Final** Mid -Year report of our most recent findings concerning the administration of the TPDES program by the State of Texas. We appreciate and thank you and your staff for your review and submittal of comments on the draft report.

The Region appreciates your continued efforts in the support and administration of the TPDES program. If you should have any questions, please do not hesitate to contact me at (214) 665-7170, or have your staff contact Kilty Baskin at (214) 665-7500 or Kay Schwab at (214) 665-6635. Thank you for your cooperation.

Sincerely yours,

SIGNED BY

Paulette S. Johnsey
Acting Chief
Permits Branch

Enclosure

cc: Firoj Vahora, TCEQ, MC-148
Chris Linendoll, TCEQ, MC-148

EXECUTIVE SUMMARY

The National Pollutant Discharge Elimination System (NPDES) program was assumed by the State of Texas Commission on Environmental Quality (TCEQ) on September 14, 1998, and is administered under the Texas Pollution Discharge Elimination System (TPDES). As cited in Section IX of the Memorandum of Agreement (MOA) executed between both parties effective September 14, 1998, EPA is responsible for assuring that the TCEQ's discharge permitting program is consistent with all Federal regulations and laws, EPA policies, EPA guidelines and guidance, and requirements agreed upon in the MOA. Additionally, EPA is required to conduct, at least semiannually, a detailed audit of the State's program and to provide a copy of the report to the State (MOA Section IX.2).

EPA conducted a Mid-Year Program Review of TCEQ's TPDES permitting and administration program April 23rd & 24th, 2003. Based on the review it was concluded that the TPDES program is consistent with all Federal regulations and laws, EPA policies, EPA guidelines and guidance, and that it adheres to the requirements agreed upon in the MOA.

PROGRAM STRENGTHS:

- A. The TCEQ continues to demonstrate the highest permit issuance rates in the nation. From September 1, 2002 through February 28, 2003, TCEQ issued a total of 444 TPDES permits (Section III.D). EPA appreciates and commends TCEQ in this accomplishment of permits issuance within this six month period. At this issuance rate, TCEQ will issue more than 20% of the universe.
- B. EPA is pleased with TCEQ's cooperative effort in finalizing an agreement for the authorization of dischargers into segments of the Houston Ship Channel System (Section III.H).
- C. EPA commends TCEQ's municipal and industrial team leaders and permitting staff for their continued effort and cooperation in resolving complex permitting issues during the permitting review process. Additionally, TCEQ staff continues to produce high quality TPDES permits. For their efforts, the staff was nominated by EPA, to receive the regional EPA/State Partnership Award (Section III.I).
- D. The administration of TCEQ's Pretreatment Program continues to be very efficient, effective, and the Pretreatment Staff has made positive strides at advancing the Pretreatment Program with high quality standards (Section V).
- E. The Toxicity Program staff continues to be efficient, productive, and effective in implementing the state whole effluent toxicity program with high quality standards (Section III.I).
- F. EPA commends TCEQ's Water Quality Application Team in its efforts in the administration of tracking and maintenance of permitting records (Section X).

- G. TCEQ has obtained additional resources in addressing the reviews and approvals of pretreatment program modifications.

CHALLENGES/CONCERNS FOR FY 2003:

- A. For this mid-fiscal year and based on PCS database, the backlog for major permits fluctuated between 15% - 18% and for minor permits 8% to 13%. In addition, TCEQ reports that the total universe of pending permit applications is 5%. This is a major accomplishment towards meeting the goals of TCEQ's Permit Issuance Time-frame Reduction Initiative.

EPA also notes that the permit issuance backlog numbers decreased to 16% and 8% for majors and minors respectively in the latest backlog report dated May 23, 2003. EPA will continue to work with TCEQ in its efforts in meeting the National Goal of permits backlog of 10% or less for major permits by the end of the calendar year 2004.

- B. EPA identified six (6) MS4 permits that have expired and additional ten (10) that will expire fiscal year 2003. EPA requests the status of permit issuance for these facilities.
- C. EPA encourages TCEQ to pursue in its efforts in finalizing the process for Pretreatment Program Development for four facilities (Section V.H).
- D. EPA continues to express its concern and requests information on TCEQ's efforts in identifying CIUs that discharge to publicly owned treatment works (POTWs) without approved Pretreatment Programs.
- E. TCEQ and EPA continue to discuss procedures to address facilities expansions (CAFOs) on impaired water bodies to ensure compliance with 40 CFR § 122.44(i).

**FY 2003 MID-YEAR PROGRAM REVIEW
OF THE
STATE OF TEXAS' ADMINISTRATION
OF THE
TPDES PERMIT PROGRAM**

I. INTRODUCTION

The Water Quality Protection Division of the U.S. Environmental Protection Agency (U.S. EPA) conducted a Mid-Year program review of the Texas Commission on Environmental Quality (TCEQ) Texas Pollutant Discharge Elimination System (TPDES) permitting program on April 23rd and 24th, 2003. Ms. L'Oreal Stepney, Manager of the Wastewater Permitting Section; Ms. Suzanne Vargas, Team Leader of the Water Quality Assessment Team; Mr. Firoj Vahora, Team Leader of Municipal Permits Team; Mr. Chris Linendoll, Team Leader of Industrial Permits Team; Ms. Jill Russell, Team Leader of the Pretreatment Team; and other TCEQ staff members attended the meeting. Kilty Baskin, Kay Schwab, Phil Jennings, and Evelyn Rosborough of the NPDES Permits and Customer Service Branches, represented the U.S. EPA.

Below is a summary of the topics discussed. As cited in Section IX. of the Memorandum of Agreement (MOA) executed between both agencies, which became effective September 14, 1998, EPA is responsible for assuring that Texas' discharge, pretreatment, and sewage sludge permitting programs are consistent with all Federal regulations and laws, and adhere to the requirements agreed upon in the MOA. EPA is required to conduct, at least semiannually, a detailed audit of the State's program, and to provide a copy of the report to the State (Section IX.2 of the MOA). This report will serve to satisfy the above requirements from September 1, 2002, to February 28, 2003, and tracks the first half of TCEQ's State Fiscal Year beginning September 1, 2002 thru February 28, 2003.

II PROGRAM REVIEWS

A. Previous Program Reviews

EPA conducted the End-of-year Program review of TCEQ's TPDES permitting program September 24th & 25th, 2002. Several recommendations, concerns, and request for information were cited in the End-of-year program report dated January 21, 2003. EPA appreciates TCEQ's efforts in addressing and resolving the majority of the issues raised. Below is brief summary of the actions taken.

1. *Wasteload allocation for the Houston Ship Channel:* TCEQ and EPA finalized an agreement dated January 21, 2003, that includes permitting conditions for dischargers into segments of the Houston Ship Channel System (Section III.H).
2. *CAFO Permit by Rule:* The TCEQ is revising the 30 TAC Chapter 321 and may propose a general permit for CAFOs. EPA understands that TCEQ will be submitting the draft permit toward the end of this fiscal year. In addition, TCEQ and EPA discussed appropriate permit conditions for CAFO wastepond overflows

and land application and TMDL implementation for TPDES permits that authorize discharges into the North Bosque watershed.

3. *Submittal of Pretreatment Program modifications:* TCEQ has submitted the requested information as part of the FY03 mid-year program review (Section V.B).
4. *Submittal of a list of those POTWs with current requirements to conduct IU surveys.* For the mid-year program review, TCEQ provided EPA with the appropriate information (Section V.D).
5. *Pending Pretreatment Program Modifications:* TCEQ has implemented a streamlining process and obtained additional resources to address the pending modifications (Section V.B).
6. *Finalization of Pretreatment Audit Reports in a timely manner:* TCEQ has made progress in the finalization Pretreatment Audit Reports (Section V.C.).

As mentioned earlier, EPA is please with TCEQ's efforts in addressing and resolving the issues raised in our previous program review report. Below are items that EPA continues to express its concerns and encourages TCEQ to continue in its progress in developing resolutions. These concerns are also listed in the Executive Summary and Conclusion of this report.

- Permits Issuance Backlog for majors
- Identification of CIUs discharging into POTWs without approved Pretreatment Programs

B. Future Program Reviews

In accordance with the requirements of the MOA, EPA will conduct the FY03 End-of-year program review of TCEQ's TPDES permitting program September 2003. In the near future, EPA will implement its streamlining oversight program review strategy. Based on the findings during this Mid-year FY2003 program review, EPA recommends implementing a reduced oversight program review strategy.

III TPDES PERMIT COVERAGE/ISSUANCE

A. Facility Coverage

In accordance with Section I of the MOA and with state and federal regulations, TCEQ has the authority to regulate the discharges from industrial facilities, publicly owned and privately owned treatment works and concentrated animal feeding operations. In addition, the TCEQ also has the authority to regulate discharges of storm water associated with industrial activity and

discharges of stormwater from municipal separate storm sewer systems. Table I below list the number of facilities covered by TPDES permits as of February 28, 2003.

TCEQ continues to put forth extensive effort in regulating and providing TPDES permitting coverage for many facilities.

Table I

TPDES Permit No.	Type of Discharge	# Facilities Covered	Expiration Date
Individual Majors	----	461	----
Individual Minors	----	2196	----
TXG830000	Petroleum UST	93	10/02/07
TXR050000	Multi-Sector Industrial Activity	6276 1930 NECs	08/20/06
TXG340000	Petroleum Storage	52	7/25/04
TXR150000	Storm water Construction Activity	4622	03/05/08
TAC 321B	CAFO	66	03/07/07
TXG110000	Concrete Batch Plant	467	02/13/05

B. Jurisdiction of Natural Gas

____ The Texas Railroad Commission has jurisdiction for those facilities classified by SIC codes 1311, 1321, 1381, 1382, 1389, 4922, and 4925 (Section I). During this fiscal year, a clarification was developed that addressed the jurisdiction for sic codes 4923 and 4924. It was concluded that EPA has jurisdiction of these SIC CODES (natural gas) which are not listed in the MOA. EPA inquired TCEQ for additional information of the authorization for issuance of six permits that regards the operation of natural gas (Letter dated January 29, 2003). TCEQ and EPA are working to clarify and resolve the issue. Additionally, the MOA between the Texas Railroad Commission and TCEQ outlines the activities and responsibilities of each agency for oil and gas production.

C. Authorizations by Rule

As cited in Section III.C.4 of the MOA, TCEQ has promulgated several rules which authorize discharges into and adjacent to waters in the state. TCEQ will not authorize TPDES discharges into waters of the U.S. under these rules until they are amended to include NPDES requirements. Appendix A lists these rules and status of their amendment and/or issuance. EPA

appreciates and supports TCEQ's efforts and pursuit in amending these rules and/or issuing TPDES general permits.

D. Individual TPDES Permit Issuance

For Mid fiscal year 2003, TCEQ issued a total of 444 TPDES permits [88 majors, 355 minors and 1 sludge]. This represents 15% of the total universe. The data was obtained from EPA's National Permit Compliance System (PCS) database. At this rate of issuance for the remainder of the year, TCEQ will continue to issue greater than 20% of the universe for major and minor permits.

In addition, TCEQ issued the Phase I/Phase II Construction General Permit March 5, 2003, and anticipates issuing the Phase II MS4 General Permit in August 2003. As mentioned earlier, TCEQ has the jurisdiction of issuing MS4 storm water permits. There are currently a universe of twenty-two (22) MS4 stormwater permits. Based on PCS database, there are six (6) MS4 permits that have expired and ten (10) that will expire this fiscal year. EPA encourages TCEQ to continue to pursue permit re-issuance and requests additional information on the status of permit issuance for these facilities.

E. Sludge Permitting

As outlined in Section VII. of the MOA, Section 405 of the Clean Water Act, and 40 CFR § 503, the TCEQ is responsible for drafting sewage sludge permits and registrations. The TCEQ regulations can be found at 30 TAC Chapter 312. Sludge disposal is authorized in TPDES permits for domestic discharges. TCEQ issued one (1) TPDES permit for Class B sludge type activity for mid fiscal year 2003.

F. TPDES Permit Backlog

The backlog of expired and never issued permits nation-wide continues to be designated as a material weakness of the NPDES permitting program. EPA continues to work with its states in meeting the national goal of backlog 10% or less for all permits by the end of calendar year 2004.

For the previous fiscal years, TCEQ and EPA has coordinated to address the backlog. Based on PCS database, the backlog for major permits fluctuated between 15% and 18% and for minors 8% and 13% during this mid-fiscal year. In addition, TCEQ reports that the total universe of pending permit applications is 5%. This is a major accomplishment in TCEQ's implementation of its Permit Issuance Time-Frame Reduction initiative. In addition, TCEQ was also granted \$247, 000 for contract assistance in issuing 50 minor industrial permits. As stated in the End-of-year program review report dated January 21, 2003, with the implementation of the states' permit time-frame initiative, contract assistance, and the revised national definition for backlog, EPA anticipates TCEQ's meeting the National Goal of 10% or less for all permits

(majors) by the end of the calendar year 2004, and continued issuance rate that is the highest in the nation.

G. Permit Issuance to Impaired Waterbodies

The regulation cited at 40 CFR Subpart 122.4(i) states that no permit may be issued “to a new source or a new discharge if the discharge will cause or contribute to the violation of water quality standards”. EPA regulations at 40 CFR § 122.2 define “new discharger” and “new source”, and the criteria for determining if a source is a new source are given at 40 CFR 122.29(b). All TPDES permits issued to new sources or new dischargers discharging to 303(d) listed segments must include a rationale in the statement of basis or fact sheet that states that there will be no increase in pollutants discharged to the impaired water body. During the permit review process this fiscal year, TCEQ and EPA have coordinated in enhancing permit language in the statement of basis and fact sheets that addresses new source/new dischargers discharging into impaired waterbodies. EPA appreciates TCEQ efforts and cooperative spirit in implementing the additional permit language in the fact sheets and statement of basis.

H. Increasing Permitted Loading to Facilities with an Approved Water Quality Management Plan (Houston Ship Channel)

The TCEQ in its letter of June 8, 2000, has committed to revising the Houston Ship Channel (HSC) waste load allocations (WLAs) and to completing the update to the Water Quality Management Plan (WQMP) for the HSC system no later than the year 2007. On January 21, 2003, the TCEQ and EPA finalized an agreement that includes permit language to be used during the interim period until the completion of the WQMP/TMDL by the year 2007. This agreement allows authorization of discharges into segments of the Houston Ship Channel System in accordance with the Water Quality Management plan and the requirements of the Clean Water Act. TCEQ is revising those permits (approximately 30 permits) that were on hold for issuance to include the appropriate permitting conditions as established in the agreement.

I. EPA Review of Individual TPDES Draft Permits

For all permits for which EPA has not waived review, TCEQ transmit to EPA copies of draft permits, permit applications, fact sheets or statement of basis and supplemental information for EPA’s review (Section VIII.A of the MOA). In accordance with Section IV.C.3, EPA reviews draft permits to ensure consistency with NPDES requirements and the Clean Water Act and provide comments within a given time period. During the mid-fiscal year 2003, the time period between September 1, 2002 and February 28, 2003, TCEQ submitted 165 (46 industrial and 119 municipal) draft TPDES permits to EPA for review. EPA has provided comments and suggestions within the required time frame on 154 of those submitted. Of those reviewed, only six (4%) objections were made. During the course of business, all but two were resolved. EPA will continue to work with TCEQ to address those pending. Overall, EPA appreciates the cooperation demonstrated by TCEQ municipal and industrial team leaders and permitting staff in

resolving complex permitting issues. In addition, the staff continues to draft high quality TPDES permits and is technically capable of handling difficult and challenging permitting matters in the State of Texas. To acknowledge their efforts and EPA's appreciation, TCEQ was nominated to receive the EPA/State Partnership Regional Award. Additionally, the toxicity staff is extremely competent and efficient with respect to permitting decisions, monitoring data review and toxicity studies.

J. Review Waiver Terminations of TCEQ Preliminary Draft Permits

Section IV.C.8 of the MOA states that EPA may rescind its waiver review by submitting a written notice to TCEQ. A summary of the permits that EPA rescinded its review of and for is as follows:

On December 21, 1999, EPA sent a letter rescinding EPA's waiver review of certain draft permits that authorize the discharge of any pollutant which is causing or contributing to the impairment of an impaired 303(d) listed segment. On June 13, 2002, EPA sent another letter to expand its rescission to include all TPDES CAFO permits in the watershed covered by the North Bosque TMDL and any CAFO permit authorizing an expansion in herd size in a watershed impaired by dissolved oxygen, nutrients, and/or pathogens. During this mid fiscal year 2003, TCEQ submitted thirty-four (34) TPDES minor permits for expansion or new facilities that discharge into impaired waterbodies. TCEQ also submitted an individual CAFO permit (Pack's Cow Palace) discharging into the North Bosque watershed, for EPA's review. The permit submittal was subsequently withdrawn by TCEQ. EPA appreciates TCEQ efforts in drafting and submitting these permits and anticipates that TCEQ will continue to submit these permits in accordance with the rescissions.

K. EPA Requests for Permit Issuance, Reissuance, or Modification

There were no requests for permit issuance, reissuance, or modification by EPA.

L. Variance Requests

The TCEQ is required by the MOA to submit variance requests from the Texas Water Quality Standards to EPA for approval prior to placing them in TPDES permits. Listed below is a summary of water quality standards variance requests submitted by the TCEQ and approved or denied by EPA during Mid fiscal year 2003.

Submitted	- 2
Denied	- 0
Approved	- 4
Pending	- 6

There are six (6) pending variance requests, three of which involve a revised criteria for selenium and consultation with the U.S. Fish & Wildlife Service.

M. Major/Minor Permit Reclassifications

There were no major/minor permit reclassifications for FY2003.

IV. LEGAL AUTHORITY

A. New Federal Rules to be Adopted by TCEQ

The TCEQ is required by 40 CFR 123.62(e) to adopt new Federal regulations within one year of federal promulgation or within two years if a state statute must first be enacted, as defined in Section III.A.17 of the MOA. During this fiscal year 2003, TCEQ adopted 40 CFR Parts 9, 122, 123, 124, and 125 - Regulations addressing Cooling Water Intake Structures for New Facilities: Effective January 17, 2002.

In addition, the following are new Federal regulations that were promulgated in Fiscal Year 2003, and to be adopted by the TCEQ in accordance with Federal regulations:

- 40 CFR Parts 9, 122, 123, and 412 - NPDES and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs) - Final Rule; Effective April 14, 2003.
- 40 CFR Part 9 and 420 - Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category - Final Rule; Effective November 18, 2002.
- 40 CFR Parts 9 and 430 - Effluent Limitations Guidelines and Standards for the Bleached Paper grade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category - Final Rule; Effective October 2, 2002.
- 40 CFR Parts 9 and 434 - Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards: Effective February 22, 2002.

B. Summary of TCEQ statutes/regulations that have changed

TCEQ is to ensure that EPA is kept inform regarding, but not limited to, draft/proposed, final regulations related to TPDES; new case laws; settlement agreements; and remands of state regulations related to TPDES (Section III.A.19).

As stated earlier, TCEQ adopted the Cooling Water Intake Structure rules March 19, 2003, in response to the final EPA rule published December 18, 2001. Existing Texas Administrative Code language is sufficient to incorporate the above federal revisions.

C. Precedent Setting Settlements and Administrative Decisions Submitted to EPA

For Mid-fiscal year 2003, there were no settlement or administrative decision submitted to EPA.

D. Number of Judicial Decisions sent to EPA

For this fiscal year 2003, there was one Judicial decision/registration. It is EPA's understanding that a copy of the decision will be submitted to EPA. EPA request TCEQ to provide this information within thirty (30) days upon receipt of this report.

E. Public Hearings/Contested Cases

Below is a list of Litigations, Motions to Overturn (MTOs), Requests for Reconsideration (RFRs), and requests for Contested Case Hearings that occurred during this fiscal year.

Name of Case	MTO, RFR, or CCH	Outcome
Upper Trinity Regional Water District	MTO filed 10/18/02	overruled by Operation of law (OOL)
Stephen Smith 04390	MTO filed 10/18/02	overruled by OOL
Seaboard 04498	MTO filed 10/18/02	overruled by OOL
Borges 3284	MTO filed	denied by OOL 3/03
Tapia 4299	MTO filed 2/4/03	granted 4/2/03
Mike Shouten 03682	MTO, received 1/8/03	overruled by operation of law 2/10/03
Oosten	Appeal of CCH, Order, and PfD	appellate decision in October, 2002; TCEQ upheld
Newell Cooper #03094,	MTO, received 1/8/03	overruled by operation of law 2/10/03
Russell Carpenter #03185	MTO, received 1/8/03	overruled by operation of law 2/10/03
Est. of Jack Beyer #03234	MTO, received 1/8/03	overruled by operation of law 2/10/03
Champion Technologies	CCH received before 9/1/02	denied 1/8/03
Lake Travis II Investments	CCH some requests received after 9/1/02	granted 2/20/03
Army Red River Depot	MTO received 2/18/03	died by OOL 4/14/03
GB Biosciences 00749	CCH requested before 9/1/02	Granted direct referral request 12/9/02

City of Waco v. TCEQ and Lone Oakk Cattle GV203254	litigation served on agency 9/24/02	
City of Waco v TCEQ GV 300043	litigation served on agency 1/14/03	
AquaSource 14243-001	CCH	direct referral 2/18/03
Gaston 1093, Permit No. 14343-001.	RFR	Received 2/2/03. Went to agenda on March 5, 2003. Denied.

V. TCEQ PRETREATMENT PROGRAM

A. Introduction

In accordance with Section III.A.4, TCEQ shall process and review new pretreatment programs and modifications including local limit modifications, and conduct pretreatment audits, and perform technical evaluation of all pretreatment programs. Additionally, the TCEQ pretreatment program is the Approval Authority for POTWs and as a Control Authority for Industrial Users (IUs) for non-pretreatment POTWs. TCEQ shall operate the program consistent with federal and state regulations cited at 40 CFR § 403 and 30 TAC Chapter 315.

The operation of the TCEQ Pretreatment Program continues to be very efficient, and the Pretreatment staff is professional and made positive strides at advancing the Pretreatment Program, and has increased productivity and timeliness in several areas to be enumerated in the following section.

B. Pretreatment Program Modifications

For mid fiscal year 2003, TCEQ reviewed thirty-three (33) program modifications. One modification was approved (Wichita Falls) and incorporated into the TPDES permit. One modification was technically completed and letter sent for City Council approval (Trinity River Authority Central Program). As mentioned in the FY2002 End-of-year program review report dated January 21, 2003, there remains a sizeable number of Pretreatment Program modifications that need to be completed to allow the programs to function as intended and as they need to, in order to get full benefits from the Pretreatment Program. Currently there are thirty (30) modifications pending for review and approval. The TCEQ has completed ten (10) technically based local limit (TBLL) development reviews or sent notices of deficiency during this period. TCEQ has implemented a streamlining process for reviewing and approving the Pretreatment Program modifications and has obtained additional resources to assist in the reviewing and approval process.

C. Pretreatment Audits

_____ There is currently seventy (70) approved Pretreatment Programs in the state of Texas and TCEQ is required to conduct audits on 20% of the universe (15). The Pretreatment Team members continue to conduct Pretreatment Audits/Municipal Pollution Prevention Assessments (MPPAs) with skill and expertise and write quality reports. During this time period, the team conducted ten (10) of the required fifteen (15) to be completed within this fiscal year. Additionally, the audit reports completed have been done within a 2 to 2.5 month time frame, which is an improvement to previous time periods, and approaches the optimum goal of finalizing them within forty-five (45) days.

However, there is a concern that Pretreatment Program Audits identified programs which were not functioning at the levels needed to accomplish the intended goals. At the time of the Mid-year review, formal actions that would require these programs to take measures to become compliant had been lacking, even though it was reported that the TCEQ has been formalizing the draft enforcement order against several pretreatment programs. EPA requests the submittal of the notification of actions taken to bring the Pretreatment Programs identified as being deficient during audits back into compliance with their approved programs and the general Pretreatment Regulations. It is now noted that since the time of this Mid-year review, one such action has been taken and notification of this action has been received.

Overall, EPA commends TCEQ in its efforts in conducting the audits. The skill and knowledge with which the audits/MPPAs have been done has been excellent.

D. Industrial User Surveys

_____ At the beginning of this fiscal year 2003, there were approximately twenty-four (24) POTWs that had been required, through their permits, to complete industrial user (IU) surveys of their collection system in order to determine if they will be required to develop complete Pretreatment Programs. At the end this mid fiscal year, twenty-seven (27) industrial user surveys were reviewed and correspondences were sent to eleven (11) of them. EPA commends TCEQ on its progress and efforts and encourages TCEQ to continue in the level of effort that will maintain timely submittals and processing of these surveys without accumulating a backlog.

E. Categorical Industrial Users

TCEQ has taken some actions to identify potential categorical industrial users (CIUs) which may be discharging process wastewater to Publicly Owned Treatment Works (POTWs) without approved Pretreatment Programs. These CIUs can have a potentially significant impact not only on the collection systems and the treatment plants, but also on the biosolids and the receiving waters.

Tentative plans to conduct four (4) seminars for potential CIUs in early 2003 have been put on hold in order to allow for more time to work on approving a majority of the modifications. Holding such seminars for the same purpose worked very well for one of the other Region 6 state agencies. The other work to identify CIUs actually discharging to POTWs without approved Pretreatment Programs has also been put on hold for similar reason. While this prioritizing of tasks is reasonable, EPA believes that finalizing this particular effort is very important in order to ensure the compliance of these CIUs with applicable regulations, and EPA strongly encourages TCEQ to resume its efforts as soon as possible.

F. Technical Evaluation of Pretreatment Programs

_____As mentioned earlier and in accordance with Section VI.A.2 of the MOA, TCEQ will review pretreatment program procedures to evaluate proper calculations of equivalent limits and local limits, and requests for removal credits. TCEQ reviewed four (4) TBLL, ten (10) TBLL development packages (a component of substantial modifications mentioned above), and conducted forty-nine (49) toxicity model runs for local limit development. There were no removal credit requests received.

G. Additional Strengths

1. The Pretreatment Team members have been very active in training for the Pretreatment Program, both within and outside their Team.
2. The Pretreatment Team members have been actively promoting Pollution Prevention (P2) and Waste Minimization while giving speeches and during numerous outreach events such as training, public meetings, and stakeholder groups conducted during this time period. The TCEQ Pretreatment Team continues to provide excellent customer service as demonstrated by the number of individual meetings with POTWs during this period.
3. During this time period efforts were made to hire temporary employees to help with the volume of work to be done by the Pretreatment Team. While not established and functional during the entire period of this evaluation, temporary employees have now been hired and make up the Pretreatment Action Team Project (PACT). There are currently six (6) temporary employees in this group.

H. Additional Concerns

_____There continues to be four (4) developing Pretreatment Programs (Gulf Coast Waste Disposal Authority (GCWDA)-Odessa, Laredo, LaPorte and Trinity River Authority (TRA) - Denton Creek) that have been required to develop complete programs for some time. The review of the TBLL component of the City of Laredo and TRA - Denton Creek programs has been completed during this period. The GCWDA-Odessa program development has been

delayed to finalize the City of Odessa's component. The TCEQ has begun its review of the City of LaPorte during this period. Our continued concern is that these programs continue to move forward with program development, complete the total development, and are reviewed and approved in a timely manner.

I. Recommendations/Requested Actions

EPA appreciates TCEQ pretreatment staff in its efforts in administering the Pretreatment Program in accordance with the MOA. Below is a recommendation and request for your submittal and consideration:

Categorical Industrial Users (CIUs) discharging regulated process wastewater to POTWs without approved Pretreatment Programs has been a perennial concern and our discussions with all delegated state agencies in Region 6 have reflected that concern. There were actions taken some time ago to identify such CIUs, but those efforts have been put on hold in order to dedicate time and resources to getting the Pretreatment modifications approved. While the current resource allocation is understood, EPA believes that it is important to continue the process to clearly identify those that need to be submitting periodic compliance reports to the TCEQ and requiring them to do so on a continuing basis. It has become apparent that the upcoming review of the Pretreatment Program in Region 6 by the Office of the Inspector General will focus part of that effort on just this very issue. Therefore, EPA requests the submittal of information regarding TCEQ's anticipation of pursuing its efforts in identifying those CIUs discharging regulated process wastewater to POTWs without approved Pretreatment Programs, and specific actions that will be taken at that time. We are pleased to note that TCEQ is currently tracking twenty-one (21) such CIUs, and EPA will seek contractor funding to assist TCEQ in identifying the universe of such CIUs in Texas.

VI. PROGRAM STATUS REVIEW

A. Status of Continuing Planning Process (CPP) Document

Section III.A.14 of the MOA states that the TCEQ shall maintain an approved continuing planning process (CPP) and a water quality standards implementation procedures (IPs). The IP's are revised after triennial review of the Texas Surface Water quality standards. The latest revisions to the CPP document were approved by the EPA on October 22, 1999.

B. Status of Proposed Revisions to the Texas Water Quality Standards and Procedures to Implement the Texas Surface Water Quality Standards

The TCEQ adopted its revised triennial water quality standards on July 26, 2000, and submitted them to EPA on October 4, 2000. New and revised standards in Appendix D (aquatic life uses and D.O. criteria for perennial and intermittent waterbodies) were approved by the

Agency (letter dated December 3, 2001). Site-specific criteria developed with water effects ratios for copper in Appendix E have also been approved by EPA (letter dated February 27, 2002). In addition, EPA completed its review of the minerals criteria for several waterbodies in the Texas Surface Water Quality Standards and approved these [letter from Miguel Flores (EPA) to Mark Vickery (TCEQ) dated October 11, 2002]. Human health criteria and minerals criteria for waterbody segments listed on the 2002 303(d) list are being reviewed for approval.

The Commission approved the Implementation Procedures on August 23, 2002, and submitted the plan to EPA for review and approval. On November 22, 2002 [letter from Miguel Flores to Mark Vickery], EPA “conditionally” approved Procedures to Implement the Texas Surface Water Quality Standards with the exception of an outstanding permitting issue requiring the establishment of permit limits if the discharge will cause or contribute to the impairment of a waterbody. This issue will be addressed on a permit-by-permit basis during oversight permit review process. Overall, EPA commends TCEQ’s efforts and cooperation during the approval/review process of the implementation guidance document.

VII. FUNDING

EPA shall provide funding to the TCEQ to support its efforts in the administration of the TPDES permitting program (Section III.B.1 of the MOA). However, it is important to note that authorized state programs are to be managed and administered with or without federal funding. Through 106 Grants (PPG/PPA), EPA provides funding each fiscal year to TCEQ to carry out permitting activities. For FY03, TCEQ was granted approximately \$3,760,000 and additional \$247, 000 via contract funding, regarding TPDES permitting activity. EPA continues to be committed in supporting TCEQ in its efforts in the administration of the TPDES program through funding.

VIII. PARTNERSHIP

A Program Assistance and Training

Sections III. A & B of the MOA outlines the roles and responsibilities, and commitments of each agency to ensure the success of administering the TPDES permitting program. More specifically, EPA’s responsibilities include, but not limited, informing the TCEQ of draft, proposed, final regulations related to NPDES; of final technical guidance and policies which pertain to NPDES; and provide technical assistance regarding the interpretation of effluent guidelines for the development of draft TPDES permits.

During the fiscal year, EPA forwarded to TCEQ proposed and/or final regulations related to NPDES, and upcoming technical training. EPA has also provided technical guidance and assistance for permit development during the permit review process, and appreciates TCEQ’s diligence and efforts in cooperation and responsiveness in drafting TPDES permits. EPA is

committed to providing additional training and/or mini-workshops in the upcoming future and solicits TCEQ's suggestions and comments.

Additionally, and as part of this partnership agreement and commitment, EPA participated in a few meetings during the Fiscal Year 2003 with TCEQ concerning the following issues:

1. September 24th & 25th, 2002 - EPA conducted an FY 2002, End-of-Year Program Review of the TCEQ's TPDES Permitting Program in Austin, Texas.
2. September 17th & 18th 2002 - State Program Managers' meeting, September 17th & 18th, 2002 at the Regional office, Dallas, Texas.
3. January 16, 2003 - TCEQ/EPA meeting; Opportunities for reduced EPA oversight.

B. Program Modifications

There have been no substantial amendments or program modifications, per Section X of the MOA, since the TCEQ assumed the TPDES program on September 14, 1998. However, Section XI. of the MOA states that EPA and TCEQ shall review the MOA within five years of its effective date. To incorporate oversight reduction/streamlining strategy, EPA will pursue the process of reviewing and revising the MOA as necessary. EPA in coordination with TCEQ anticipates of finalizing the amendments to the MOA by the end of the calendar year 2003.

IX. STAFFING LEVELS

The Wastewater Permitting Section is comprised of six (6) teams (Agriculture, Industrial Permits, Municipal Permits, Pretreatment, Stormwater and General permits, and Technical support team). In addition, the Water Quality Assessment team, of the Water Quality Assessment Section provides significant contributions to the issuance of permits by providing technical support for the WET program. As of mid-fiscal year 2003, the wastewater permitting section is fully staffed (a total of 58 members). They have hired three (3) new staff members (two for the industrial permits team and 1 for the municipal permits team). Table II below gives a breakdown of the number of staff members on each team. EPA continues to be pleased with TCEQ's efforts and ability to maintain an adequate staffing level to successfully administer the TPDES permitting and administration programs.

Table II

Team	Number of Staff	Number of Vacancies
Technical Support	4	0

Team	Number of Staff	Number of Vacancies
Agriculture	10	0
Industrial permits	10	0
Municipal Permits	11	0
Pretreatment	6	0
Stormwater and general permits	7	0

X. ADMINISTRATIVE PROGRAM REVIEW/FILE AUDITS

A. Permits Compliance System (PCS) Review

_____ In accordance with Section III.A.11 of the MOA, TCEQ shall input permit and enforcement data into the National Permit Compliance System (PCS) in accordance with federal regulations cited at 40 CFR § 123.26 (e)(4). EPA commends TCEQ's Water Quality Application Team for entering PCS data in a timely manner. EPA and TCEQ staff members will continue to work together regarding PCS and permitting matters.

B. Individual Permit File Review

EPA is required by federal regulations and Section IX of the MOA to maintain oversight of State authorized NPDES permitting programs. Part of the oversight role is mid-year and end-of-year program reviews, which include review of NPDES permits and related materials. EPA is also mandated to ensure that required conditions in accordance with the Clean Water Act are established in permits that EPA does not routinely review (i.e., minor permits). EPA is authorized to review this information in accordance with 40 CFR Subpart 123.41(a) which states "Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction." To ensure availability of information, EPA is committed to providing the State adequate prior notice of the permit files to be reviewed.

Administrative, technical, and toxicity file reviews were conducted (see Appendix B for list of files reviewed). A total of twenty-three (23) files were reviewed. The permit files requested by the EPA prior to the meeting were made available. In addition, EPA commends TCEQ's staff for organizing the files in an efficient manner that allowed EPA staff members to review the material effectively and in a timely manner. Based on the file review, the contents of the files were well organized. For the majority (87%) of the files reviewed, all of the pertinent documents (final and draft permits, public notices, permit application, statement of basis, etc. . .) were readily accessible. The statement of basis were well written and the permits were written in accordance with the requirements of the federal and state regulations.

XI. PUBLIC PARTICIPATION POLICY

On an annual basis, if necessary, EPA shall review TCEQ's public participation policies and practices (Section IX.7). During mid fiscal year 2003, there were no significant deficiencies in TCEQ's public participation policy; it appears to conform to the requirements of federal and state regulations. TCEQ puts forth effort in the accessibility of permits and permitting actions of TPDES permits.

XII. COORDINATION WITH FEDERAL AND STATE AGENCIES

In accordance with Section IV.D. of the MOA between TCEQ and EPA, "the TCEQ will involve federal and state agencies including the United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and the Texas Parks and Wildlife Department (TPWD) during the permitting process to address endangered species issues in TPDES permits." In addition, notice will also be sent to the state historical preservation officer (SHPO) to address any potential impacts on properties listed or eligible for listing in the National Historic Register of Historic Places. "TCEQ will address effects on endangered species and historic properties through setting and enforcing water quality standards, which undergo EPA approval" If comments are submitted during the public comment period time frame, TCEQ will coordinate with that state to resolve the issues. If the permit is not revised to address the state's comments, then EPA will be notified and review the TPDES permit to ensure compliance with the requirements of the Clean Water Act (CWA) which include direct effects on aquatic life and human health. In addition and also as stated in the MOA, TCEQ shall submit to the Service and/or other federal and state agencies, copies of notice, draft permits and permit applications for review and comment. For this fiscal year 2003, there were no formal consultations for permit issuance.

XIII. CONCLUSION

EPA reiterates its appreciation of the TCEQ's efforts and coordination in administering the TPDES permitting program. EPA also commends the TCEQ for its continual efforts in productivity in permit issuance. EPA anticipates that TCEQ would meet the National Goal of 10% or less backlog for all permit by the end of the calendar year 2004. With the continual partnership between both agencies, the protection of the aquatic life and human health will continue to be achieved.

Additionally, TCEQ continues to have the highest permit issuance rate in the nation. EPA reiterates its appreciation of the cooperation and diligence demonstrated by TCEQ staff members; the industrial and municipal permits teams continues to draft high quality TPDES permits; the toxicity team is extremely competent and efficient regarding permitting decisions; and the pretreatment staff continues to be effective and efficient and has made positive strides in the enhancement of the Pretreatment program; and the Water Quality Application Team

demonstrates great efforts in the administration of the tracking and maintenance of permitting records.

XIV RECOMMENDATIONS

To address some of our concerns as outlined in the previous sections of this report, EPA recommends the TCEQ to address and submit information regarding the following items listed below:

- A. Based on PCS database, the backlog for major permits fluctuated between 15% and 18% and for minors 8% to 13% during the mid fiscal year. EPA encourages TCEQ to continue in its progress in meeting the National Goal of permits backlog of 10% or less for all permits by the end of the calendar year 2004. In addition, TCEQ reports that the total universe of pending permit applications is 5%. EPA commends TCEQ's efforts toward this accomplishment and meeting the goals of the Permit Issuance Time-Frame Reduction Initiative.
- B. EPA identified six (6) MS4 permits that have expired and an additional ten (10) that will expire fiscal year 2003. EPA requests the status of permit issuance for these facilities.
- C. EPA encourages TCEQ to pursue in its efforts in finalizing the process for Pretreatment Program Development for four facilities as listed in Section V.H of this report.
- D. EPA continues to express its concern and requests information on TCEQ's efforts in identifying CIUs that discharge to POTWs without approved Pretreatment Programs.

Appendix A

List of General Permits to be Issued by TCEQ

PERMIT TYPE	TITLE	DESCRIPTION	SCHEDULE
New TPDES	Multi-Sector General Permit - Industrial TXR050000	Storm water runoff from industrial activities	Issued 8/20/01. Currently working on amendment; draft at legal.
New TPDES	Harris Co. Onsite Disposal	Onsite domestic wastewater and 500 gallon discharge	Public notice 11/00; re-noticed. Notice period completed and awaiting final contract agreement.
NPDES to TPDES	Discharge from treatment of petroleum fuel substance contaminated waters	Treated groundwater contaminated from USTs and ASTs	Public notice 9/14/01
TAC 321 H to TPDES	Hydrostatic test discharges	Water used to test pipe and tank integrity	EPA approved; however revised draft submitted 5-21-03 for EPA review and approval.
TAC 321 N - Revise	Livestock trailer cleaning from commercial facilities	cattle trailer washing operations	Preliminary draft in under development.
TAC 321 O to TPDES	Aquaculture production facilities	fish farm wastewater	Preliminary draft developed, and stakeholders mtgs completed. Scheduled to send to EPA for 2 nd review.
New TPDES	Phase II Storm Water MS4	Storm water from municipal separate storm sewer systems	Public comment period completed; working on RTCs; Issuance in June/July 2003.
New TPDES	Phase II Storm Water Construction	Storm water from construction activities	Issued 3/05/03.
TAC 321 L to TPDES	Discharges from Motor Vehicles Cleaning Facilities	Car wash and building power wash activities	Stakeholder meeting held 5/22. Preliminary draft under development.
NPDES to TPDES	Discharges from petroleum bulk stations and terminals	Petroleum contaminated water from secondary containment areas	Need to develop a general permit to replace the adopted NPDES general permit.
TAC 321 F to TPDES	Shrimp Industry	Wastewater from shrimp processing facilities	2002 - Determine if a general permit is necessary to replace authorization by rule.

New TPDES Gen. Permit	De-minimus discharges	Discharges include swimming pool water	Not defined. Need to identify small discharges and determine if a general permit could more effectively authorize.
TAC 321 L to TPDES Gen. Permit	Discharges Motor Vehicles Cleaning Facilities	Discharges from car wash and other power washing activities	Stakeholder meeting held 5/22/03. Preliminary draft under development.
NPDES to TPDES Gen. Permit	Discharges from Ready-Mixed Concrete Plants and/or products plants or associated facilities	Currently issuing authorization under the adopted NPDES permit. Discharges of wash water and storm water at ready-mix concrete plants.	Need to develop a general permit to replace the adopted NPDES general permit.
New TPDES Gen. Permit	Small POTWs	Discharges of small volumes of domestic waste.	Investigating having draft prepared by outside contractor.
TAC 321 E to TPDES	Surface Coal Mining, Preparation, and Reclamation Activities	Active mine site discharges	2003 - Determine if a general permit is necessary to replace authorization by rule.
TAC 321B to TPDES	CAFOs	Land application of waste	Draft permit 6/03.
New TPDES	Small Dischargers	Domestic & industrial water low volumes	Under evaluation
New TPDES	Beneficial sludge use	Land disposal of sludge	Under evaluation
New TPDES	Water treatment plants		Preliminary draft has been prepared. Stakeholders meetings need to be scheduled.
New TPDES	De minimus permits (swimming pools, etc.)		Not defined. Need to identify small discharges and determine if a general permit could more effectively authorize.

Appendix B

List of TPDES Permit Files Reviewed

NPDES Permit No.	Facility
TX0008851	Texas Medical Center
TX0112461	Champion Technologies
TX0102008	Centerpoint Energy Houston
TX0124605	Acme Brick Company
TX0092517	Mountain Man, Inc.
TX0070963	City of Miami
TX0093556	United Structures of America, Inc.
TX0073105	Six Flags Splashtown, L.P.
TX0024503	City of Grandview
TX0000132	Red River Army Depot
TX0004014	Griffin Corp.
TX0005061	Goodyear
TX0005991	PremCor Refining
TX0047295	Ft. Worth Village Creek
TX0047562	Port Lavaca
TX0003824	TI Stafford
TX0007285	Agrifos Fertilizer
TX0009148	Phillips 66 Borger
TX0047571	Plainview
TX0077232	Cibolo Creek
TX0001848	City of Garland
TX0021369	Bacliff MUD
TX0070831	City of Crockett

